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**WISCONSIN LEGISLATIVE COUNCIL STAFF**

**2000 ANNUAL REPORT ON THE  
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE\***

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\* This Report was prepared by Ronald Sklansky, Director, and Richard Sweet, Assistant Director, Rules Clearinghouse, Legislative Council.



## **FUNCTION OF THE LEGISLATIVE COUNCIL** **RULES CLEARINGHOUSE**

### **REVIEW OF RULES**

Legislative review of proposed administrative rules begins with the submission of a rule to the Legislative Council Rules Clearinghouse. Section 227.15, Stats., requires that, prior to any public hearing on a proposed rule or prior to notification of the presiding officer of each house of the Legislature if no hearing is held, an agency must submit the proposed rule to the Legislative Council Rules Clearinghouse for staff review. (See the *Administrative Rules Procedures Manual* (September 1998), prepared by the Legislative Council and the Revisor of Statutes Bureau, for more information on drafting, promulgating and reviewing administrative rules.)

The Legislative Council is provided 20 working days, following receipt of a proposed rule, to prepare a report on its review of the rule. However, with the consent of the Director of the Legislative Council, the review period may be extended for an additional 20 working days.

Upon receipt of a proposed administrative rule, a Clearinghouse rule number is assigned and submission of the rule is recorded in the *Bulletin of Proceedings* of the Wisconsin Legislature. Two numbered rule jackets, one for the Assembly and one for the Senate are prepared.

The Director of the Rules Clearinghouse assigns the rule to a Legislative Council staff member for review and preparation of the statutorily required report. The staff member generally prepares the report within 10 working days and transmits the report to the Director or Assistant Director for final review. When the report on the proposed rule is completed, the staff returns the rule jackets and the Clearinghouse report containing the results of the review to the agency. [See **Appendix 1** for a sample Clearinghouse report.]

In accordance with s. 227.15, Stats., the Clearinghouse report:

1. Reviews the statutory authority under which the agency intends to adopt the rule.
2. Reviews the proposed rule for form, style and placement in the Wisconsin Administrative Code.
3. Reviews the proposed rule to avoid conflict with, or duplication of, existing rules.
4. Reviews the proposed rule to ensure that it provides adequate references to related statutes, rules and forms.
5. Reviews the language of the proposed rule for clarity, grammar and punctuation and to ensure the use of plain language.

6. Reviews the proposed rule to determine potential conflicts and to make comparisons with related federal regulations.

7. Reviews the proposed rule to determine whether the agency has specified the number of business days within which the agency will review and make a determination on an application for a business permit.

As part of this review process, staff of the Legislative Council is directed to ensure that procedures for the promulgation of the rule are followed, as required by ch. 227, Stats., and to streamline and simplify the rule-making process.

### **OTHER RELATED RESPONSIBILITIES**

Other primary rule review responsibilities of the Legislative Council include:

1. Working with and assisting the appropriate legislative committees throughout the rule-making process.

2. Notifying the Joint Committee for Review of Administrative Rules (JCRAR) and appropriate committees of the Legislature whenever the rule-making authority of an agency is eliminated or significantly changed by the repeal, amendment or creation of a statute, by the interpretive decision of a court of competent jurisdiction or for any other reason.

3. Assisting the public in resolving problems related to administrative rules. This function includes providing information, identifying agency personnel who may be contacted in relation to rule-making functions, describing locations where copies of rules, proposed rules and forms are available and encouraging and assisting participation in the rule-making process.

The final responsibility of the Legislative Council is the submission of an annual report to the chief clerk of each house of the Legislature and to the Governor summarizing any action taken by the staff and making recommendations to streamline the rule-making process and eliminate obsolete, duplicative and conflicting rules. This report is the 21st *Annual Report* submitted by the Legislative Council and covers the staff's activities during calendar year 2000. It has been preceded by an initial report to the 1979 Legislature, which covered the staff's activities from November 2, 1979 to April 1, 1980 (i.e., from the effective date of Ch. 34, Laws of 1979, which initiated the omnibus rule review process, to the end of Floorperiod IV of the 1979 Session) and annual reports for calendar years 1980 to 1999.

### **RECORDKEEPING SYSTEM**

The Legislature's *Bulletin of Proceedings* is used for recording actions relating to the review of administrative rules. The Legislative Council, the Senate and Assembly Chief Clerks and the Legislative Reference Bureau cooperate in a computerized recordkeeping system. Commencing with the 1979 Session, action on administrative rules has been shown in a separate part of the *Bulletin of Proceedings*.

Under this system, each proposed rule is assigned a number and entered in the computer by the staff of the Legislative Council. A copy of the Clearinghouse report is placed in a Senate and Assembly rule jacket (similar to bill jackets) and the rule is then transmitted to the agency promulgating the rule for its review. After transmittal, all legislative actions taken on the rule are entered on the face of the jacket and are reported to the chief clerk of each house. The chief clerk enters the actions in the computerized system, thereby compiling a history of all legislative actions taken on a rule.

At the beginning of each biennial session, the administrative rule portion of the *Bulletin of Proceedings* is updated by deletion of all records relating to rules which, in the preceding session, have become effective, have been withdrawn or have been permanently objected to by law. Also removed from the *Bulletin of Proceedings* annually and withdrawn from the rule-making process is any proposed rule that, in accordance with s. 227.14 (6) (c), Stats., has been pending for at least four years, but no more than five years, after the date of its receipt by Legislative Council under s. 227.15 (1), Stats. The final *Bulletin of Proceedings* printed for the preceding session then serves as the permanent record of the disposition of those rules. The remaining rules, which are still in the promulgation process, are carried over into the new *Bulletin of Proceedings* for the following biennial session.



### **2000 ACTIVITIES OF THE RULES CLEARINGHOUSE**

During 2000, 189 proposed administrative rules were submitted to the Legislative Council by 22 state agencies.

As of December 31, 2000, Clearinghouse reports had been completed on 168 of the 189 proposed rules and 20 rules were in the process of review. One rule was exempt from the reporting requirement. In addition to the 168 rule reports completed on 2000 rules, reports were prepared in 2000 on eight rules received in late 1999. Of the 176 reports completed in 2000, no rule required an extension of the review process by the Director of the Legislative Council. Clearinghouse activities in 2000 are summarized below:

Rules Received in 2000		189
Withdrawn	0	
No report required	1	
Pending	20	
		-21
2000 Reports Completed		168
1999 Reports Completed in January 2000		+8
<b>Total Reports in 2000</b>		176

The table below shows that, from November 2, 1979 (the beginning of the omnibus rule review process) through December 31, 2000, the Clearinghouse has received 4,688 rule submissions and completed reviews on 4,585 proposed rules. Of the total rule submissions, 83 were exempt from the reporting process for various reasons and 20 were under review at the end of 2000.

<i>Year</i>	<i>Received</i>	<i>Completed</i>	<i>Exempt</i>
1979	70	45	12
1980	252	227	24
1981	252	234	9
1982	251	254	3
1983	222	220	4
1984	255	247	2
1985	213	206	4
1986	251	252	4
1987	182	186	1
1988	219	216	5
1989	212	208	1
1990	264	254	3
1991	199	205	2
1992	225	228	0
1993	241	232	1
1994	225	234	0
1995	236	224	2
1996	194	201	1
1997	158	159	1
1998	208	200	2
1999	170	177	1
2000	189	176	1
<b>Total</b>	<b>4,688</b>	<b>4,585</b>	<b>83</b>



In 2000, rules were received from the following 22 state agencies:

*Number of Proposed Rules, by Submitting Agency*

Department of Administration	4
Department of Agriculture, Trade and Consumer Protection	9
Department of Commerce	11
Department of Corrections	2
Department of Employee Trust Funds	6
Department of Financial Institutions	4
Department of Health and Family Services	19
Department of Natural Resources	42
Department of Public Instruction	9
Department of Regulation and Licensing	31
Department of Revenue	5
Department of Tourism	1
Department of Transportation	14
Department of Veterans Affairs	1
Department of Workforce Development	9
Elections Board	1
Ethics Board	1
Office of the Commissioner of Insurance	10
Public Service Commission	7
State of Wisconsin Investment Board	1
Wisconsin Arts Board	1
Wisconsin Technical College System Board	1
<b>Total</b>	<b>189</b>

Although the statistics presented in this report give some indication of the workload of the Legislative Council staff in reviewing proposed administrative rules, it should be noted that rules vary in length. Similarly, Clearinghouse reports vary from completion of a simple check-list to large reports. In summary, for all rule reports completed in 2000, the Legislative Council staff commented on:

1. The *statutory authority* of a proposed administrative rule on 46 occasions.
2. The *form, style and placement* of proposed administrative rules in the Wisconsin Administrative Code on 136 occasions.
3. A *conflict with, or duplication of*, existing rules on three occasions.

4. The *adequacy of references* of proposed administrative rules to related statutes, rules and forms on 77 occasions.

5. *Clarity, grammar, punctuation and use of plain language* in proposed administrative rules on 122 occasions.

6. The *potential conflicts* of proposed administrative rules with, and their comparability to, related federal regulations on one occasion. In addition, the Legislative Council staff has adopted a policy of noting when proposed rules are based on federal “*guidelines*,” which do not have the force of law, as opposed to rules based on federal “*regulations*,” which do have the force of law and with which the state may have a legal obligation to comply.

7. The *permit action deadline requirement* on two occasions.

### **WORKING WITH AND ASSISTING COMMITTEES**

A Legislative Council staff attorney or analyst works with each standing committee, except Joint Finance. When a committee has a proposed rule referred to it by the presiding officer of the house, the staff member will participate in the committee’s oversight.

During 2000, legislative committees held hearings or requested meetings on **30 proposed rules**. Modifications to rules were either requested or received in the legislative review of 20 **proposed rules**. **Two rules** were objected to by a committee.

As a result of committee activities, **two rule objections** were subject to JCRAR jurisdiction in 2000. The JCRAR nonconcurred in one objection and objected to the second proposed rule.

The table below reviews legislative committee activity in the review of proposed administrative rules beginning on November 2, 1979 and ending on December 31, 2000.

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2000)*						
Year	Rules Submitted	Rules Subject to Modification	Committee Review Objections	JCRAR Rule Objections	Enacted Laws Following Rule Objections	Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections
11/2/79-80	322	18	5	1	0	No bill introduced, rule withdrawn
1981	252	29	10	4	4	Chapters 20 (SEC. 1561), 26, 31 and 180, Laws of 1981
1982	251	31	4	1	1	1983 Wisconsin Act 94
1983	222	30	5	0	0	--
1984	255	26	2	2	2	1983 Wisconsin Act 310 and 1985 Wisconsin Act 29 (SEC. 826)
1985	213	37	8	3	2	♦1985 Wisconsin Act 29 (SECS. 1059r and 2238ng to 2238or) ♦1985 Assembly Bill 460, passed and vetoed; override failed
1986	251	30	1	0	0	--
1987	182	30	5	0	0	--
1988	219	38	4	0	0	--
1989	212	22	6	2	0	♦1989 Senate Bill 89 and 1989 Assembly Bill 171 (failed to pass) ♦1989 Senate Bill 248 and 1989 Assembly Bill 457 (failed to pass)
1990	264	29	2	1	0	♦1991 Senate Bill 24 and 1991 Assembly Bill 71 (failed to pass)
1991	199	19	5	1	0	♦1991 Senate Bill 442 and 1991 Assembly Bill 840 (failed to pass after rule objected to withdrawn by agency)
1992	225	33	3	2	1	♦1993 Wisconsin Act 9 ♦1993 Senate Bill 3 and 1993 Assembly Bill 17 (failed to pass)
1993	241	24	1	0	0	--
1994	225	29	3	0	0	--
1995	236	19	0	0	0	--
1996	194	19	1	1	1	Late introduction in 1995 Session: ♦1997 Assembly Bill 5 and 1997 Senate Bill 20 (failed to pass) ♦1997 Wisconsin Act 237 (SECS. 320s, 322d and 322e)
1997	158	19	6	0	0	--
1998	208	15	0	0	0	--
1999	170	18	2	1	0	--
2000	189	20	2	1	1	♦1999 Wisconsin Act 178
TOTAL	4,688	535	75	20	12 (PLUS ONE BILL PASSED AND VETOED; VETO NOT OVERRIDDEN)	

\* The general system of legislative review of proposed administrative rules, primarily embodied in ss. 227.15 and 227.19, Stats., took effect on November 2, 1979, as part of Ch. 34, Laws of 1979.

### **NOTICE OF CHANGE IN RULE-MAKING AUTHORITY**

To date, no court decisions or changes in legislation have been brought to the attention of the Legislative Council Staff that would require notification of JCRAR or appropriate standing committees of a change in, or the elimination of, agency rule-making authority.

### **ASSISTING ADMINISTRATIVE AGENCIES**

The Legislative Council staff has responded to numerous questions from agency personnel, relating to both the process and the law governing legislative review of proposed rules.

Presentations regarding the legislative review of administrative rules were made by the Director to the following groups:

1. On February 29, to a Continuing Legal Education class hosted by the Wisconsin Department of Justice.
2. On July 7, to members of the Wisconsin Rural Leadership Program.
3. On October 5, to Administrative Law Judges from the Wisconsin Department of Workforce Development.

### **REVISION OF STATUTES DEALING WITH ADMINISTRATIVE RULE-MAKING**

There were no significant changes made to the statutes regulating the legislative review of administrative rules.

### **PUBLIC LIAISON**

To date, the Legislative Council staff has received minimal requests from the public. These infrequent questions have either concerned aspects of the rule review procedure or have related to the status of specific rules.

RS:RNS:jal;ksm;rv

***APPENDIX 1***  
***SAMPLE CLEARINGHOUSE REPORT***



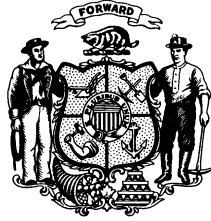
## WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

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### **CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### **CLEARINGHOUSE RULE 00-169**

AN ORDER to repeal and recreate Ins 9.33; and to create chapter Ins 18, relating to health benefit plan grievance requirements and independent review organizations.

Submitted by **OFFICE OF THE COMMISSIONER OF INSURANCE**

12-01-00      RECEIVED BY LEGISLATIVE COUNCIL.  
01-02-01      REPORT SENT TO AGENCY.

RS:GAA:tlu;rv

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES ☒      NO ☐

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES ☒      NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES ☐      NO ☒

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES ☒      NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES ☒      NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES ☐      NO ☒

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES ☐      NO ☒

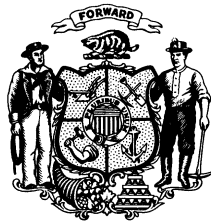


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## **CLEARINGHOUSE RULE 00-169**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### **1. Statutory Authority**

a. Sections 632.83 (1) and 632.835 (1) (c), Stats., define the term “health benefit plan” in two different ways. Section Ins 18.01 (7) defines the term “health benefit plan” as a combination of the statutory definitions and includes specifically “Medicare + Choice, Medicare supplement and replacement plans.” The statutory definitions should be used with respect to their applicable subjects; that is, the definition in s. 632.83, Stats., should be used with respect to internal grievance procedure requirements and the definition in s. 632.835, Stats., should be used with respect to independent review of adverse and experimental treatment determinations. Reference to Medicare plans only should be used if those plans can be included in the phrase “any hospital or medical policy or certificate” as used in s. 632.745 (11) (a), Stats.

b. Section Ins 18.02 (1) (a) and (8), refer to an “expedited grievance procedure.” Presumably, the authority for requiring an expedited grievance procedure is derived from s. 632.83 (2) (a), Stats., which provides that every insurer must establish and use an internal grievance procedure that is approved by the commissioner. However, the rule should make clear that the expedited grievance procedure may be avoided under s. 632.835 (2) (d) 2., Stats., which provides that the internal grievance procedure is not necessary when an independent review organization determines that the health condition of an insured is such that requiring the insured

to use the internal grievance procedure before proceeding to independent review would jeopardize the life or health of the insured or the insured's ability to regain maximum function.

c. Section Ins 18.02 (2) (c) provides that a notice to an insured must contain a statement that the grievance or independent review process need not be exhausted in order for an insurer to use some other unstated procedures. The rule should make clear that s. 632.835 (2) (c), Stats., generally provides that an insured must exhaust the internal grievance procedure before the insured may request an independent review. [See also s. Ins 18.04.]

d. Under s. 632.835 (5) (a), Stats., the commissioner is required to promulgate rules which include six specific items. Included are standards for determining whether an independent review organization is unbiased and standards addressing conflicts of interest by independent review organizations. [See s. 632.835 (5) (a) 2. and 6., Stats.] There appear to be no provisions in the rules addressing these requirements.

e. Section Ins 18.10 (1) (i) states that expedited review shall in no case take longer than 72 hours from the time of review. However, s. 632.835 (3), Stats., describes the length of time within which an independent review organization must undertake an expedited review. The statute provides different time periods in the event that following the ordinary procedure would jeopardize the life or health of the insured or the insured's ability to regain maximum function. Under that provision, the insurer must submit the information required within one day after receiving the notice of the request for independent review. The independent review organization must request any additional information within two business days within receiving the information and the insurer shall, within two days after receiving a request, submit any information requested or an explanation of why the information is not being submitted. Finally, the independent review organization must make its decision within 72 hours after the expiration of the time limits that apply in the matter. Allowing only a maximum of 72 hours from the time of the request conflicts with the statute.

## **2. Form, Style and Placement in Administrative Code**

a. SECTION 1 of the rule should read: "Ins 9.33 is repealed." The treatment clause of SECTION 2 should read: "Chapter Ins 18 is created to read:". A chapter title should be created and the three following subchapters should be created: Definitions, Grievance Procedures and Independent Review Organizations.

b. Since s. Ins 18.01 includes all of the definitions in s. 632.835, Stats., the introduction simply should read: "In this chapter:".

c. In s. Ins 18.01 (4) (b), the phrase "would subject the insured" should be replaced by the phrase "the insured may be subject."

d. In s. Ins 18.01 (6), the phrase "as defined in this chapter" is unnecessary and should be deleted.

e. In s. Ins 18.01 (11) (e) 7., it appears that the word “above” should be replaced by the phrase “in this paragraph.”

f. In s. Ins 18.02 (6), par. (b) should conclude with a period.

g. In ss. Ins 18.02 (8) and 18.10 (2) (e), the word “through” should be replaced by the word “to.”

h. In s. Ins 18.10 (4), par. (e) does not follow grammatically from the introduction and should be placed elsewhere in the rule.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. Section Ins 18.01 (8) should provide a more specific cross-reference.

b. Section Ins 18.10 (1) (h) refers to s. 632.835 (2) (e), Stats. The citation is incorrect.

c. Section Ins 18.12 refers to a form. The agency should ensure that the requirements of s. 227.14 (3), Stats., are met.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In the second sentence of the second paragraph in the analysis, the comma after the word “includes” should be deleted and a comma should be inserted after the word “insurers.”

b. Section Ins 18.01 (4) (c) does not seem to add anything to the definition and probably should be deleted.

c. In s. Ins 18.01 (11) (f), the word “shall” should be replaced by the word “does.” Also, what does the phrase “significant extent” mean?

d. In s. Ins 18.01 (12), a comma should be inserted after the word “by.”

e. Section Ins 18.02 (2) (c) begins with an incomplete sentence. Presumably, the sentence refers to other alternative procedures. What are these alternative procedures? [See, also, sub. (3) (b).]

f. In s. Ins 18.04, “impose” should be inserted prior to “other requirements.”

g. In s. Ins 18.10 (1) (i), the second sentence is an incomplete sentence.

h. Section Ins 18.10 (3) (a) is awkward and should be rewritten.

i. Section Ins 18.10 (4) appears to be a restatement of s. 632.835 (6m), Stats. Why is the statutory language not used? For example, compare s. Ins 18.10 (4) (d) to s. 632.835 (6m) (d).

j. Why do the provisions of the rule, such as ss. Ins 18.10 (1) (e) and 18.14 (2) (e) and (i), not refer to experimental treatment determinations?

k. Section Ins 18.16 (5) provides that an independent review organization may not bill the insured for the cost of the review. Perhaps a note should be included stating that s. 632.835 (3) (a) requires an insured to pay a \$25 fee to an independent review organization and that the fee may be refunded if the insured prevails in a proceeding.

***APPENDIX 2***  
***PROCESSING INSTRUCTIONS TO AGENCY HEADS***

